



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-1138]

RIN 1625-AA09

Drawbridge Operation Regulation; Sacramento River, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating schedule governing the Freeport Drawbridge, mile 46.0, over the Sacramento River. The bridge owner has proposed to change the 6 a.m. and 10 p.m., summer time "on demand" bridge opening hours to a new timeframe between 9 a.m. and 5 p.m.; and to extend the winter (4 hour advance notice), operating schedule to include the month of October, due to a documented decrease in drawbridge openings compared to other nearby bridges. The proposed change is to address the issue of misalignment between drawbridge staffing and actual usage of the drawbridge, apparently resulting in unnecessary staffing of the drawbridge during periods of navigational inactivity.

DATES: Comments and related material must reach the Coast

Guard on or before [Insert date 45 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2011-1138 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437-3516, email *David.H.*Sulouff@uscg.mil. If you have questions on viewing or submitting material to the

docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-1138), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address,

or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2011-1138" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-1138" and click "Search." Click the "Open Docket Folder" in the "Actions" column.

You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The existing drawbridge operating regulation for the Freeport, CA Drawbridge, mile 46.0 over the Sacramento River, found at 33 C.F.R. 117.189, was last amended by the Coast Guard in June 5, 1986 and requires the drawbridges between Isleton, CA and the American River junction (including the Freeport drawbridge), to open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

An Advanced Notice of Proposed Rulemaking (ANPRM) was published in the Federal Register on January 25, 2012. 77 FR 3664. No comments were received.

C. Basis and Purpose

The Freeport Drawbridge is a swing span style drawbridge at mile 46.0, over the Sacramento River, owned by the County of Sacramento and maintained by Sacramento and Yolo counties. The Freeport Drawbridge provides 190 feet horizontal clearance, 29 feet of vertical clearance for vessels above Mean High Water in the closed-to-navigation position and unlimited vertical clearance when open. The Sacramento River is legally navigable for bridge

permitting purposes from its confluence with Suisun Bay to mile 245.0 at Red Bluff, CA.

Both Sacramento and Yolo counties have submitted a joint request for a permanent change to the Freeport Drawbridge operating requirements. The proposed change is to address the issue of misalignment between drawbridge staffing and actual vessel usage of the drawbridge that appears to be resulting in unnecessary staffing of the drawbridge during periods of navigational inactivity.

The bridge owner has provided bridge operating statistics that show significantly less drawspan operations during certain (Winter) months and evening hours in 2009-2010 than nearby bridges at Georgiana Slough, Tyler Island and Walnut Grove. The statistical information and a detailed explanation by the bridge owner have been included in the docket and are available for public review and comment. The bridge owner also has indicated a significant amount of outreach has been performed on this proposal to various waterway user organizations including the Pacific Inter-Club Yacht Association, the Recreational Boaters of California, the Capital City Yacht Club, the Sacramento Yacht Club, River View Yacht Club and Hornblower Cruises.

D. Discussion of Proposed Rule

Under the existing operating regulations, Freeport Drawbridge opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

The Counties who maintain and operate the drawbridge have proposed to change the summer time "on demand" bridge opening hours from between 6 a.m. and 10 p.m., to between 9 a.m. and 5 p.m.; and to extend the winter (4 hour advance notice), operating schedule to include the month of October. This would allow the bridge owner to remove the bridge operator from the drawbridge until needed for scheduled bridge openings (particularly during the winter months), providing a possible monetary savings due to reduced bridge operating personnel costs.

There is no alternative route for vessels navigating on this reach of the waterway. Vessels that can be safely navigated through the drawbridge while it is in the closed to navigation position may continue to do so at any time. The proposed rule would change the operating schedule so from May 1 through September 30 the drawbridge will open on

signal from 9 a.m. to 5 p.m. At all other times (including November 1 through April 30), the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Bridge operating statistics provided by the bridge owner, show significantly fewer drawspan operations during 2009-2010 than nearby bridges at Georgiana Slough, Tyler Island and Walnut Grove, concluding that this proposed rule

is not a significant regulatory action.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will adjust an existing advance notice requirement for bridge openings to more closely conform to the existing needs of navigation, while allowing the bridge owner to reduce bridge operation costs, as documented by the statistics provided by the bridge owner. Vessels that can safely transit under the bridge may continue to do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that

Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

F. List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.189 as follows:

§ 117.189 Sacramento River

(a) The draws of each bridge from Isleton to the American River junction except for the Sacramento County highway bridge across the Sacramento River, mile 46.0 at Freeport,

shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

(b) The draw of the Sacramento County highway bridge, mile 46.0 at Freeport, shall open on signal from May 1 through September 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is give to the drawtender at the Rio Vista Bridge across the Sacramento River, mile 12.8.

(c) The draws of the California Department of Transportation bridges, mile 90.1 at Knights Landing, and mile 135.5 at Meridian, shall open on signal if at least 12 hours notice is given to the California Department of Transportation at Marysville.

(d) The draws of the bridges above Meridian need not be opened for the passage of vessels.

Dated: 7/17/12

J. R. Castillo
Rear Admiral, U.S. Coast Guard
Commander, Eleventh Coast Guard District

[FR Doc. 2012-19601 Filed 08/09/2012 at 8:45 am;
Publication Date: 08/10/2012]